



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Criminal Appeal 105 of 2004**

**ELIUD MUTURI NJAUMBIRE.....APPELLANT**

*Versus*

**REPUBLIC.....RESPONDENT**

*(Being appeal against conviction and sentence by J. N. Nyagah, Senior Resident Magistrate, in the Resident Magistrate's Criminal Case No. 562 of 200 at Karatina)*

**JUDGMENT**

The Appellant was charged with preparation to commit a felony contrary to *Section 308(1)(3)(b)* of the Penal Code. The Appellant pleaded not guilty and on the trial proceeding P.W.1 who described himself as a businessman stated that he had employed a night watchman called Francis Muraguri. On the 8<sup>th</sup> of July 2003 P.W.1 said at about 6 p.m. he closed his shop, which is a wholesale and retail shop and went home. He left the night watchman on duty. On the following morning on opening the shop, he found his watchman inside the shop. The night watchman told him that on the previous night there were thugs who attempted to break into his shop and also attempted to take his car which was at the rear of the premises. The watchman told him he fought the thugs and managed to arrest one of them. That the one who was arrested was taken to Karatina Police Station. P.W. 1 on checking the roof he found the iron sheet had been cut and that the car which was Registration Number KAL 596N was inside the premises. He found the vehicle had its door broken but nothing was stolen in the vehicle.

P.W.2 the night watchman of P.W.1, said that he guards his shop. He narrated how on the material date at 4.00 p.m. he had gone round the building. He said he heard people inside the building and on checking the rear door he found that the padlock had been cut. He blew the whistle and two people came from the building through the rear door and they found him outside the door where one of them hit him with an iron bar on the mouth. They then ran away. One of them ran towards the catholic church whilst the other one ran towards Three-In-One Hotel. At first he blew his whistle then ran after one of them and caught him at Three-In-One hotel. He returned him to the shop and left him being guarded by other watchmen whilst he went to the police station. He reported the matter and the police on attending the shop found that the iron sheet had been cut and they also found a pair of scissors on the top of the roof. The police also found a rope which was tied inside the building. He said that the accused with other accomplices had used the rope to drop into the building. He also stated that they cut the padlock holder. P.W. 2 confirmed that a polythene bag was found inside the building. On being cross-examined by the accused P.W.2 confirmed that he had arrested the accused and that all along he had not lost sight of the accused as he ran. On being re-examined he confirmed that the security lights were all on as he followed the accused.

P.W.3 said that he is attached as a police officer at Karatina Police Station. He said that at 4 p.m. on the 4<sup>th</sup> July he was on duty when he received information from a watchman. He said that he together with another officer went to the scene where they found the accused having been detained. He also confirmed that the padlock had been cut and confirmed having seen the pliers and the rope. He proceeded to arrest the accused. P.W.4 confirmed that he is a watchman at Karatina town. He said that on 8<sup>th</sup> August 2003 he heard the whistle. On hearing the whistle he saw a person running from Thiomi direction. He said that he knew the accused. After about two minutes P.W.2 came and stated that the accused had tried to steal from the place where he guards. P.W.2 then went and called police officers. On being cross-examined P.W. 4 confirmed that he was the one who stopped the accused from running. He denied that

the accused at that time was holding a bottle. On being re-examined he confirmed that Thiomi bar and paradise bar are around the same road.

On being found with a case to answer the Appellant stated that on the material day he had come with his brother from Nairobi. They went into paradise bar and when it closed they went to Thiomi Bar. On asking whether there was lodging he was informed that it was full. He then went to Three-In-One Hotel to look for a room. As he was going there holding a bottle a watchman stopped him and accused him of stealing. He was eventually arrested and the police came.

The trial court having found that a case had been made against the accused to the required criminal standard convicted the accused and sentenced him to three years imprisonment. The Appellant being aggrieved of the conviction and sentence appealed to this court.

The Appellant in his ground stated that trial court erred while passing judgment and on relying on the evidence of P.W.2. At the hearing of the appeal the State submitted that there was clear and cogent evidence against the Appellant. That he was found inside the premises where the roof had been cut and that he was arrested by P.W. 2 after a continuous chase. He therefore stated that there was no mistaken identity. On sentencing, State Counsel submitted that it was reasonable and lenient.

I have considered the evidence presented during the trial and I am of the view that the prosecution did prove its case beyond a reasonable doubt. The evidence of P.W.2 is very clear and was unshaken during cross-examination. As correctly stated by the State P.W.2 continuously chased the accused until he apprehended him. He confirmed that as he gave chase there was light. His evidence was corroborated by P.W.3. I am aware that this is an identification by a single witness but considering that P.W.2 gave a continuous chase where there was light, I seek to rely on the case of **ALI RAMADHANI -V- REPUBLIC CRIM. APPEAL NO. 79 of 1988 (Unreported)** where it was held as follows:

***“.....the identification of a person who took part in the alleged offence and was chased from the scene of crime to the place where he was arrested is of course strong evidence of identification and if all links in the chain are sound, it may safely be relied upon.....”***

The court therefore finds no basis of interfering with the conviction of the accused. The sentence meted to the accused person has now been served. It is, however, the court's view that there is no basis of interfering with that sentence. This court's finding therefore is that there is no basis for the present appeal and the same is dismissed.

***Dated and delivered this 23<sup>rd</sup> March 2007.***

MARY KASANGO

JUDGE